

SECOND REGULAR SESSION

HOUSE BILL NO. 1490

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HOSMER AND MARSH (Co-sponsors).

Read 1st time January 16, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2726L.011

AN ACT

To repeal sections 1.160 and 558.019, RSMo, and to enact in lieu thereof two new sections relating to sentencing.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 1.160 and 558.019, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 1.160 and 558.019, to read as follows:

1.160. No offense committed and no fine, penalty or forfeiture incurred, or prosecution
2 commenced or pending previous to or at the time when any statutory provision is repealed or
3 amended, shall be affected by the repeal or amendment, but the trial and punishment of all such
4 offenses, and the recovery of the fines, penalties or forfeitures shall be had, in all respects, as if
5 the provision had not been repealed or amended, except[:

6 (1)] that all such proceedings shall be conducted according to existing procedural laws[;
7 and

8 (2) That if the penalty or punishment for any offense is reduced or lessened by any
9 alteration of the law creating the offense prior to original sentencing, the penalty or punishment
10 shall be assessed according to the amendatory law].

558.019. 1. This section shall not be construed to affect the powers of the governor
2 under article IV, section 7, of the Missouri Constitution. This statute shall not affect those
3 provisions of section 565.020, RSMo, section 558.018 or section 571.015, RSMo, which set
4 minimum terms of sentences, or the provisions of section 559.115, RSMo, relating to probation.

5 2. The provisions of this section shall be applicable to all classes of felonies except those
6 set forth in chapter 195, RSMo, and those otherwise excluded in subsection 1 of this section.

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

7 For the purposes of this section, "prison commitment" means and is the receipt by the department
8 of corrections of a defendant after sentencing. For purposes of this section, prior prison
9 commitments to the department of corrections shall not include commitment to a regimented
10 discipline program established pursuant to section 217.378, RSMo. Other provisions of the law
11 to the contrary notwithstanding, any defendant who has pleaded guilty to or has been found
12 guilty of a felony other than a dangerous felony as defined in section 556.061, RSMo, and is
13 committed to the department of corrections shall be required to serve the following minimum
14 prison terms:

15 (1) If the defendant has one previous prison commitment to the department of
16 corrections for a felony offense, the minimum prison term which the defendant must serve shall
17 be forty percent of his **or her** sentence or until the defendant attains seventy years of age, and has
18 served at least forty percent of the sentence imposed, whichever occurs first;

19 (2) If the defendant has two previous prison commitments to the department of
20 corrections for felonies unrelated to the present offense, the minimum prison term which the
21 defendant must serve shall be fifty percent of his **or her** sentence or until the defendant attains
22 seventy years of age, and has served at least forty percent of the sentence imposed, whichever
23 occurs first;

24 (3) If the defendant has three or more previous prison commitments to the department
25 of corrections for felonies unrelated to the present offense, the minimum prison term which the
26 defendant must serve shall be eighty percent of his **or her** sentence or until the defendant attains
27 seventy years of age, and has served at least forty percent of the sentence imposed, whichever
28 occurs first.

29 3. Other provisions of the law to the contrary notwithstanding, any defendant who has
30 pleaded guilty to or has been found guilty of a dangerous felony as defined in section 556.061,
31 RSMo, and is committed to the department of corrections shall be required to serve a minimum
32 prison term of eighty-five percent of the sentence imposed by the court or until the defendant
33 attains seventy years of age, and has served at least forty percent of the sentence imposed,
34 whichever occurs first.

35 4. For the purpose of determining the minimum prison term to be served, the following
36 calculations shall apply:

37 (1) A sentence of life shall be calculated to be thirty years;

38 (2) Any sentence either alone or in the aggregate with other consecutive sentences for
39 crimes committed at or near the same time which is over seventy-five years shall be calculated
40 to be seventy-five years.

41 5. For purposes of this section, the term "minimum prison term" shall mean time
42 required to be served by the defendant before he is eligible for parole, conditional release or other

43 early release by the department of corrections. [Except that the board of probation and parole,
44 in the case of consecutive sentences imposed at the same time pursuant to a course of conduct
45 constituting a common scheme or plan, shall be authorized to convert consecutive sentences to
46 concurrent sentences, when the board finds, after hearing with notice to the prosecuting or circuit
47 attorney, that the sum of the terms results in an unreasonably excessive total term, taking into
48 consideration all factors related to the crime or crimes committed and the sentences received by
49 others similarly situated.]

50 6. (1) A sentencing advisory commission is hereby created to consist of eleven
51 members. One member shall be appointed by the speaker of the house. One member shall be
52 appointed by the president pro tem of the senate. One member shall be the director of the
53 department of corrections. Six members shall be appointed by and serve at the pleasure of the
54 governor from among the following: the public defender commission; private citizens; a private
55 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members
56 shall be appointed by the supreme court, one from a metropolitan area and one from a rural area.
57 All members of the sentencing commission appointed prior to August 28, 1994, shall continue
58 to serve on the sentencing advisory commission at the pleasure of the governor.

59 (2) The commission shall study sentencing practices in the circuit courts throughout the
60 state for the purpose of determining whether and to what extent disparities exist among the
61 various circuit courts with respect to the length of sentences imposed and the use of probation
62 for defendants convicted of the same or similar crimes and with similar criminal histories. The
63 commission shall also study and examine whether and to what extent sentencing disparity among
64 economic and social classes exists in relation to the sentence of death and if so, the reasons
65 therefor. It shall compile statistics, examine cases, draw conclusions, and perform other duties
66 relevant to the research and investigation of disparities in death penalty sentencing among
67 economic and social classes.

68 (3) The commission shall establish a system of recommended sentences, within the
69 statutory minimum and maximum sentences provided by law for each felony committed under
70 the laws of this state. This system of recommended sentences shall be distributed to all
71 sentencing courts within the state of Missouri. The recommended sentence for each crime shall
72 take into account, but not be limited to, the following factors:

- 73 (a) The nature and severity of each offense;
- 74 (b) The record of prior offenses by the offender;
- 75 (c) The data gathered by the commission showing the duration and nature of sentences
76 imposed for each crime; and
- 77 (d) The resources of the department of corrections and other authorities to carry out the
78 punishments that are imposed.

79 (4) The commission shall publish and distribute its system of recommended sentences
80 on or before July 1, 1995. The commission shall study the implementation and use of the system
81 of recommended sentences until July 1, 1998, and return a final report to the governor, the
82 speaker of the house of representatives, and the president pro tem of the senate. Following the
83 July 1, 1998, report, the commission may revise the recommended sentences every three years.

84 (5) The governor shall select a chairperson who shall call meetings of the commission
85 as required or permitted pursuant to the purpose of the sentencing commission.

86 (6) The members of the commission shall not receive compensation for their duties on
87 the commission, but shall be reimbursed for actual and necessary expenses incurred in the
88 performance of these duties and for which they are not reimbursed by reason of their other paid
89 positions.

90 (7) The circuit and associate circuit courts of this state, the office of the state courts
91 administrator, the department of public safety, and the department of corrections shall cooperate
92 with the commission by providing information or access to information needed by the
93 commission. The office of the state courts administrator will provide needed staffing resources.

94 7. The provisions of this section shall apply only to offenses occurring on or after August
95 28, 1994.